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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,769	10/12/2005	Gerrit Hollemans	NL 030392	2211
24737 7590 06/11/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER MONIKANG, GEORGE C				
ART UNIT 2615		PAPER NUMBER		
MAIL DATE 06/11/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/552,769

**Applicant(s)**

HOLLEMANS ET AL.

**Examiner**

GEORGE C. MONIKANG

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/552,769.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/88)  
Paper No(s)/Mail Date 10/3/2007
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 2/15/2008 have been fully considered but they are not persuasive.
2. With respect to applicant's arguments that the teachings of Vossler and Boesen do not disclose the touch sensitive area being touched by the ear, the examiner maintains his stand. The conduction sensor of Boesen is placed within the ear and has a sensor that has to be touched by the ear to pick up voice signals (Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear).
3.
  1. Applicant's arguments, filed 2/15/2008, with respect to the rejection(s) of claim(s) 1-9 under 10/552,769 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rast, US Patent Pub. 2001/0046304 A1.
  - 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3 & 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7,206,429 B1 as applied to claim 1 above, in view of Rast, US Patent Pub. 2001/0046304 A1.

Re Claim 1, Vossler discloses a personal audio system (100) comprising a remotely controllable device (110) and a controller (120) for remotely controlling the device (110) by sending a control signal (130) to the device (110) (fig. 1a: 110: col. 2, lines 26-35), the controller (120) being arranged to be substantially worn in or by a human ear (150) (fig. 1b), but fails to disclose the controller (120) having an outer surface (121) with a touch-sensitive area (122) (Rast, para 0055); the controller (120) being further arranged to detect the touch-sensitive area (122) being touched (Rast, para 0055) and to send the control signal (130) in response to detecting the touch-sensitive area (122) being touched (Rast, para 0055). However, Rast does.

Taking the combined teachings of Vossler and Rast as a whole, one skilled in the art would have found it obvious to modify the personal audio system (100) comprising a remotely controllable device (110) and a controller (120) for remotely controlling the device (110) by sending a control signal (130) to the device (110) (fig. 1a: 110: col. 2,

lines 26-35), the controller (120) being arranged to be substantially worn in or by a human ear (150) (fig. 1b) of Vossler with a controller (120) having an outer surface (121) with a touch-sensitive area (122) (Rast, para 0055); the controller (120) being further arranged to detect the touch-sensitive area (122) being touched (Rast, para 0055) and to send the control signal (130) in response to detecting the touch-sensitive area (122) being touched (Rast, para 0055) as taught in Rast to create easier control by the user.

Re Claim 3, the combined teachings of Vossler and Rast disclose a personal audio system as claimed in claim 1, the controller arranged to detect a temporal pattern in the touch-sensitive area being touched (Rast, para 0055), and to send the control signal in response to detecting the temporal pattern (Rast, para 0055).

Re Claim 2, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 1, characterized in that the controller (120) is arranged to fit substantially in a human ear (150) concha (160) (Vossler, fig. 1b), such that the area is accessible for touching when the controller (120) is fitted substantially in the concha (160) (Vossler, fig. 1a: 110; fig. 1b; col. 2, lines 26-35: external controls are touch sensitive).

Claims 7-9 have been analyzed and rejected according to claim 1.

Re Claim 10, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 1, further comprising a touch-detecting means (124) coupled to the touch-sensitive area (122) (Rast, para 0055: touch patterns will be able to detect touch from a user), whereby the touch-detecting means (124) measures

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internal resistance of a part of the human body that touches the touch-sensitive area

(122) (Rast, para 0055: touch patterns will be able to detect touch from a user).

Re Claim 11, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 10, further comprising a temporal pattern analysis means (125) coupled to the touch-detecting means (124) (Rast, para 0055: touch patterns will be able to detect touch from a user), whereby the temporal pattern analysis means (125) converts an output signal of the touch-detecting means (124) into a digital representation of the output signal (Rast, para 0055: touch patterns will be able to detect touch from a user).

Re Claim 12, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 10, with a protruding touch sensitive area (Vossler, fig. 1a-1b); but fail to disclose whereby the controller (120) consists of a disc containing a transducer, whereby the disc fits in a concha of an ear. However, official notice is taken that both the concepts and advantages of providing an earpiece with a disc containing a transducer are well known in the art. Thus it would have been obvious to modify the earpiece with a disc containing a transducer to be able to provide a better fit for the earpiece.

Re Claim 13, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 1, wherein the touch sensitive area (122) detects a pressure with which the touch-sensitive area is touched (Rast, para 0055: touch patterns will be able to detect touch from a user).

Claim 14 has been analyzed and rejected according to claim 12.

Re Claim 15, the combined teachings of Vossler and Rast disclose a personal audio system (100) as claimed in claim 1, where the touch sensitive area by being touched controls a plurality of functions of the personal audio system (Rast, para 0055: touch patterns will be able to detect touch from a user).

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vossler, US Patent 7,206,429 B1 and Rast, US Patent Pub. 2001/0046304 A1 as applied to claim 3 above, in view of Boesen, US Patent 6,560,468 B1.

Re Claim 4, Vossler and Rast disclose a personal audio system (100) as claimed in claim 3, characterized in that the outer surface (121) has a further touch-sensitive area (123) (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive), the controller (120) being arranged to send the control signal (130) only if the further touch-sensitive area (123) is touched (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch sensitive; fig. 3; col. 4, lines 18-32), but fails to disclose the touch-sensitive area (123) touched substantially by the ear (150) when the controller (120) is substantially worn in or by a human ear (150). However, Boesen does (Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear).

Taking the combined teachings of Vossler, Rast and Boesen as a whole, one skilled in the art would have found it obvious to modify the personal audio system (100) as claimed in claim 3, characterized in that the outer surface (121) has a further touch-sensitive area (123) (Vossler, fig. 1a: 110; col. 2, lines 26-35: external controls are touch

sensitive), the controller (120) being arranged to send the control signal (130) only if the further touch-sensitive area (123) is touched (Vossler, fig. 1a: 110; col. 2, lines 26-35; external controls are touch sensitive; fig. 3; col. 4, lines 18-32) of Vossler and Rast with the touch-sensitive area (123) touched substantially by the ear (150) when the controller (120) is substantially worn in or by a human ear (150) as taught in Boesen (Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear) so the system can be more dynamic.

Re Claim 5, the combined teachings of Vossler, Rast and Boesen disclose a personal audio system (100) as claimed in claim 4, characterized in that the controller (120) is arranged to send a further control signal (131) to the device (110) if the further touch-sensitive area (123) is touched (Vossler, fig. 1a: 110; col. 2, lines 26-35; external controls are touch sensitive; fig. 3; col. 4, lines 18-32).

#### ***Allowable Subject Matter***

1. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. The following is a statement of reasons for the indication of allowable subject matter for claim 6: The prior art does not teach or moderately suggest the following limitations:

The system (100) comprises a second controller (120) for remotely controlling the device (110) by sending a further control signal (131) to the device (110), the



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second controller (120) having an outer surface (121) with a further touch-sensitive area (123), the second controller (120) being arranged to be substantially worn in or by a human ear (150), and the second controller (120) being further arranged to detect a further temporal pattern in the further touch-sensitive area (123) being touched, and to send the further control signal (131) in response to detecting the further temporal pattern.

Limitations such as these may be useful in combination with other limitations of claim 1.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is (571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/  
Examiner, Art Unit 2615

6/9/2008

/Vivian Chin/  
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